United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

APRIL TERM, 1902.

No. 1193.

150

No. 6, SPECIAL CALENDAR.

THOMAS BRADLEY, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

FILED MARCH 22, 1902.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 24, 1902.

In the Court of Appeals of the District of Columbia

THOMAS BRADLEY, Plaintiff in Error,
vs.
THE DISTRICT OF COLUMBIA.
No. 1193.

1 In the Police Court of the District of Columbia, February Term, 1902.

DISTRICT OF COLUMBIA
vs.
THOMAS BRADLEY.
No. 218,002 and 218,003. Informations for Violation of Act for the Prevention of Smoke.

Be it remembered that in the police court of the District of Columbia, at the city of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

2 In the Police Court of the District of Columbia, February Term, 1902.

DISTRICT OF COLUMBIA
vs.
THOMAS BRADLEY.
No. 218,002. Information for Violation of Act for the Prevention of Smoke.

Defendant arraigned March 4, 1902; plea, not guilty; jury trial demanded.

March 5.—Demand for jury trial withdrawn; verdict, guilty.

Mar. 5.—Judgment, guilty; sentence, to pay a fine of twenty dollars, and, in default, to be committed to the workhouse for the term of 60 days.

Mar. 5.—Exceptions taken to the rulings of the court on matters of law, and notice given by defendant of his intention to apply to Court of Appeals for a writ of error.

Mar. 7.—Bills of exceptions filed, settled, and signed.

Mar. 11.—Writ of error received from Court of Appeals.

Recognizance in the sum of $100 entered into on writ of error to Court of Appeals, D. C., upon the condition that, in the event of the denial of the application for a writ of error, the defendant will, within five days next after the expiration of ten days, appear in police court and abide by and perform its judgment, and that, in the event of the granting of such writ of error, the defendant will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises.—John B. Larner, surety.

MARCH 21ST, 1902.

I hereby certify, under the seal of this court, that the foregoing is a true copy of the record of the proceedings had in the police court in the above-entitled case.

[Seal Police Court of District of Columbia.]

JOSEPH HARPER,
Dep. Clerk Police Court, Dist. of Columbia.

3 In the Police Court of the District of Columbia, February Term, 1902.

DISTRICT OF COLUMBIA *vs.* THOMAS BRADLEY. } No. 218,003. Information for Violation of Act for the Prevention of Smoke.

Defendant arraigned March 4, 1902; plea, not guilty; jury trial demanded.

Mar. 5.—Demand for jury trial withdrawn; verdict, guilty.

Mar. 5.—Judgment, guilty; sentence, to pay a fine of twenty dollars, and, in default, to be committed to the workhouse for the term of sixty days.

Recognizance in the sum of $100 entered into on writ of error to Court of Appeals, D. C., upon the condition that, in the event of the denial of the application for a writ of error, the defendant will, within five days next after the expiration of ten days, appear in police court and abide by and perform its judgment, and that, in the event of the granting of such writ of error, the defendant will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises.—John B. Larner, surety.

Mar. 5.—Exceptions taken to rulings of court on matters of law and notice given by defendant in open court of his intention to apply to a justice of the Court of Appeals, D. C., for a writ of error.

Mar. 7.—Bills of exceptions filed, settled, and signed.

Mar. 11.—Writ of error received from Court of Appeals.

MARCH 21ST, 1902.

I hereby certify under the seal of this court, that the foregoing is a true copy of the record of the proceedings had in the police court in the above-entitled case.

[Seal Police Court of District of Columbia.]

JOSEPH HARPER,
Dep. Clerk Police Court, Dist. of Columbia.

4 In the Police Court of the District of Columbia, Holding a March Term, 1902.

DISTRICT OF COLUMBIA
vs.
THOMAS BRADLEY. } No. 218,002 & 218,003.

Bill of Exceptions.

Be it remembered, that on the trial of this cause on the 5th day of March, 1902, the plaintiff, to maintain the issue on defendant's part joined, called as a witness one Robert L. Lynch, who testified, on direct examination, in substance as follows: That on the 20th day of February, 1902, between the hours of 2.30 and 3.36 o'clock p. m., and on the 26th day of February, 1902, between the hours of 9.58 and 11.50 o'clock a. m., from the roof of the office of the Commissioners for the District of Columbia, located on Indiana avenue, nearly opposite to Judiciary square, in the city of Washington, D. C., he made three several observations of the smokestack on the building of the Washington Loan and Trust Company, located at the corner of 9th and F streets northwest, in said city, about one-half mile distant; that on each of said occasions he saw dense, thick black and gray smoke issuing from said stock; that the emission of said smoke on said occasions varied from one and one-half to three minutes in duration; and thereupon the defendant, to maintain the issue on his part joined, offered to prove by the defendant, Thomas Bradley, a witness present in open court and who had been duly sworn, stating in substance that he was the real estate officer of the Washington Loan and Trust Company, a ten-story office building requiring the use of boilers and furnaces and the building from which the said smoke was said to have been emitted, and had been such officer for a period of about three years; that he had charge of the
5 furnaces and operating of said building and was thoroughly acquainted therewith; that he had given the subject of the abatement of smoke examination and was qualified to speak from his experience in reference to said matter; and further the defendant offered to prove by this witness and other witnesses that there was no known device, machine, or method to be used either in connection with hard, soft, or mixed coals or other materials, which would cause combustion without emitting any smoke whatever, and that it is physically impossible to comply with the terms of the act of Congress which declares that the emission of dense or thick black or gray smoke or cinders from any smokestack or chimney used in connection with any stationary engine, steam boiler or furnace of any description within the District of Columbia is a public nuisance.

To which tender of proof the counsel for the prosecution then and there objected for the reason that the same was immaterial and irrelevant, which objection was sustained and the proof excluded

by the presiding justice; to which ruling the counsel for the defendant then and there excepted.

And the exception as above recited was, at the time of the taking of the same by the defendant, noted before judgment by the justice presiding, and the defendant now prays the court to sign this bill of exceptions, which is done, now for then, this 7th day of March, 1902.

(Signed) CHARLES F. SCOTT, [SEAL.]
Judge Police Court of Dist. of Columbia.

6 In the Police Court of the District of Columbia, February Term, A. D. 1902.

THE DISTRICT OF COLUMBIA, *ss:*

Andrew B. Duvall, Esq., city solicitor for the District of Columbia, by James L. Pugh, Jr., Esq., assistant city solicitor for the District of Columbia, who for the said District prosecutes in this behalf in his proper person, comes here into court and causes the court to be informed and complains that Thomas Bradley, late of the District of Columbia aforesaid, on the 20th day of February, in the year A. D. nineteen hundred and two, in the District of Columbia aforesaid, and in the city of Washington, being then and there the occupant of a certain building, to wit, the building situated at 9th and F streets northwest, in the city aforesaid, in the District aforesaid, to which said building there is attached a smokestack and chimney used in connection with a certain stationary engine, steam boiler and furnace in said building, the said Bradley, as such occupant, did then and there unlawfully cause, permit, and allow the emission into the open air from the said smokestack and chimney, situated as aforesaid, certain thick and dense black and gray smoke, which was then and there a public nuisance, contrary to and in violation of an act of Congress for the prevention of smoke in the District of Columbia, and for other purposes, approved February 2, 1899, and constituting a law of the District of Columbia.

ANDREW B. DUVALL, Esq.,
City Solicitor for the District of Columbia,
By J. L. PUGH, JR.,
Assistant City Solicitor for the District of Columbia.

Personally appeared R. L. Lynch this 27th day of February, A. D. 1902, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

[Seal Police Court of District of Columbia.]

JOSEPH HARPER,
Deputy Clerk of the Police Court
for the District of Columbia.

[Endorsed:] Col.—. No. 218,002. Information. District of Columbia *vs.* Thomas Bradley. Violation of act for the prevention of smoke. P. M. S. J. T. D. Witnesses: R. L. Lynch, officer. D'f't. 3/5. J. T. D. withdrawn. 20–60. Filed Mar. 4, 1902. Joseph Y. Potts, clerk police court, D. C.

7 In the Police Court of the District of Columbia, February Term, A. D. 1902.

THE DISTRICT OF COLUMBIA, *ss:*

Andrew B. Duvall, Esq., city solicitor for the District of Columbia, by James L. Pugh, Jr., Esq., assistant city solicitor for the District of Columbia, who for the said District prosecutes in this behalf in his proper person, comes here into court and causes the court to be informed and complains that Thomas Bradley, late of the District of Columbia aforesaid, on the 21st day of February, in the year A. D. nineteen hundred and two, in the District of Columbia aforesaid, and in the city of Washington, being then and there the occupant of a certain building, to wit, the building situated at 9th and F streets northwest, in the city aforesaid, in the District aforesaid, to which said building there is attached a smokestack and chimney used in connection with a certain stationary engine, steam boiler, and furnace in said building, the said Bradley, as such occupant, did then and there unlawfully cause, permit, and allow the emission into the open air from the said smokestack and chimney, situated as aforesaid, certain thick and dense black and gray smoke, which was then and there a public nuisance, contrary to and in violation of an act of Congress for the prevention of smoke in the District of Columbia and for other purposes, approved February 2, 1899, and constituting a law of the District of Columbia.

ANDREW B. DUVALL, ESQ.,
City Solicitor for the District of Columbia.
By J. L. PUGH, JR.,
Assistant City Solicitor for the District of Columbia.

Personally appeared R. L. Lynch this 27th day of February, A. D 1902, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

[Seal Police Court of District of Columbia.]

JOSEPH HARPER,
Deputy Clerk of the Police Court for the District of Columbia.

[Endorsed:] Col.—. No. 218,003. Information. District of Columbia *vs.* Thomas Bradley, 9th & F Sts. N. W. Violation of act for the prevention of smoke. P. M. S. J. T. D. Witnesses: R. L Lynch, officer. D'f't. 3/5. J. T. D. withdrawn. 20–60. 3/5. Filed Feb'y 27, 1902. Joseph Y. Potts, clerk police court, D. C.

8 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Charles F. Scott, judge of the police court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said police court, before you, between The District of Columbia, plaintiff, and Thomas Bradley, defendant, a manifest error hath happened, to the great damage of the said defendant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Seal Court of Appeals, District of Columbia.

Witness the Honorable Richard H. Alvey, Chief Justice of the said Court of Appeals, the 11th day of March, in the year of our Lord one thousand nine hundred and two.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by—

R. H. ALVEY,
Chief Justice of the Court of Appeals of the District of Columbia.

9 UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

In the Police Court of the District of Columbia.

I, Joseph Y. Potts, clerk of the police court of the District of Columbia, do hereby certify *that* the foregoing pages, numbered from 1 to 8, inclusive, to be true copies of originals in causes No. 218,002 and 218,003, wherein The District of Columbia is plaintiff and Thomas Bradley defendant, as the same remain upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix

the seal of said court, — the city of Washington, in said District, this 21st day — March, A. D. 1902.

[Seal Police Court of District of Columbia.]

JOSEPH Y. POTTS,
Clerk Police Court, Dist. of Columbia.

Endorsed on cover: District of Columbia police court. No. 1193. Thomas Bradley, plaintiff in error, *vs.* The District of Columbia. Court of Appeals, District of Columbia. Filed Mar. 22, 1902. Robert Willett, clerk.

Court of Appeals, District of Columbia

APRIL TERM, 1902.

No. 1193.

No. 6, SPECIAL CALENDAR.

THOMAS BRADLEY, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

BRIEF IN BEHALF OF DISTRICT OF COLUMBIA.

ANDREW B. DUVALL,
E. H. THOMAS,
Attorneys for Appellee.

GLOBE PRINTING CO., WASHINGTON, D. C.

In the Court of Appeals of the District of Columbia

APRIL TERM, 1902.

No. 1193.

No. 6, SPECIAL CALENDAR.

THOMAS BRADLEY, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

BRIEF FOR DEFENDANT IN ERROR.

This case arises from proceedings instituted by the appellee in the Police Court against the appellant for violation of the act of Congress approved February 2, 1889, entitled "An act for the prevention of smoke in the District of Columbia, and for other purposes." (30 Stat., 812.) The bill of exceptions apparently involves two prosecutions on two different dates, viz: February 20, 1902, and February 21, 1902, against the appellant as "occupant" of a building situated at Ninth and F streets Northwest, in the city of Washington. (Record pp. 1, 2, 4, and 5.) The cases were heard by the Police Court without a jury, demand for jury trial having

been withdrawn, and resulted in a judgment of guilty in each case.

The appellant has assigned the following errors:

> "First. In rendering judgments that the defendant is guilty in that the statute in question is repugnant to the fifth amendment of the Constitution of the United States.
>
> "Second. In rendering judgments that the defendant is guilty in that the statute in question is unreasonable and contrary to fundamental principles of justice.
>
> "Third. In excluding the proof tendered by the defendant in that said proof tended to exculpate the defendant."

We do not understand that appellant has sufficiently stated in his third assignment of error wherein the court below was mistaken in excluding proof.

I.

This assignment (which we will first consider) seems to be too indefinite, and we respectfully submit that when the incompetency of the witnesses and the irrelevancy of the evidence are considered it will be clearly seen that there is no controversy before the court. There is and was no dispute as to any fact necessary to be found in order to sustain a conviction, and the attorneys for the respective parties seem to have harmoniously agreed at the trial that the defendant was guilty of a violation of this law as heretofore interpreted by this court. The bill of exceptions does not contain the whole evidence, and the sole exception arises from an exclusion by the trial court of an offer to prove by the defendant (who was the real estate officer of the Washington Loan and Trust Company, the owner of a ten-story office building requiring the use of boilers and furnaces and the build-

ing from which the said smoke was said to have been emitted, and had been such officer for a period of about three years *and in charge of the furnaces and operating of said building*) *that he was thoroughly acquainted therewith; and that he had given the subject of the abatement of smoke examination and was qualified to speak from his experience in reference to said matter;* and further the defendant offered to prove by this witness and other witnesses that there was no known device, machine, or method to be used either in connection with hard, soft, or mixed coals or other materials, *which would cause combustion without emitting any smoke whatever;* and that it is physically impossible to comply with the terms of the act of Congress, which declares that the emission of dense or thick black or gray smoke or cinders from any smokestack or chimney used in connection with any stationary engine, steam boiler, or furnace of any description within the District of Columbia is a public nuisance. (Record, p. 3.)

The testimony of this witness was not, nor was that of any other witness, offered as tending to establish that the furnaces of this office building were equipped with any smoke-consuming device whatever; nor was it sought to establish by such offer that hard coal or any other coal having a tendency to lessen the quantity of smoke was there used, nor that any effort whatever had been there made to prevent the emission of dense or thick black or gray smoke. The information sought to be given to the Police Court by the offer, as stated in the bill of exceptions, seems to have been wholly outside of the case because such evidence had no application whatever to the emission or non-emission of dense or thick black or gray smoke from the smokestack of the Wahington Loan and Trust Company Building. Considered, therefore, as opinion or expert evidence,

there is no basis of fact in the case to which it was applicable.

The only expert named seems to have been the defendant, and he offered himself as a witness to testify that he was qualified to speak from his experience in reference to said matter (Record, p. 3), i. e., the abatement of smoke. The opinion of Mr. Bradley as to his qualification in this respect is wholly immaterial, because the question of his qualification was one for the court alone. It does not appear that Mr. Bradley ever operated any furnaces; it merely appears that he had charge thereof, and that he had given the subject of the abatement of smoke examination. For what period of time, how, or with what result, or where the defendant had pursued the subject of the examination of the abatement of smoke does not appear.

It appearing that the business of the defendant was to have charge of the building, and not that of actually operating the furnaces, or to fire them, or to purchase the coal, and that he had no practical or theoretical knowledge whatever as an engineer, it would seem very plain that the Police Court was justified in its ruling, and was required to decline to take the opinion of this witness, even had there been any fact in the case to which such an opinion would have been applicable. The bill of exceptions, however, states that the defendant offered to prove by this witness and "*other witnesses*" that there was no known device, machine, or method to be used, either in connection with hard, soft, or mixed coals or other materials, *which would cause combustion without emitting any smoke whatever*, and that it is physically impossible to comply with the terms of the act of Congress, which declares that the emission of dense or thick black or gray smoke or cinders from any smoke-

stack or chimney used in connection with any stationary engine, steam boiler, or furnace of any description within the District of Columbia is a public nuisance.

This offer is subject to the same objections that have been stated and to the further objection that it was immaterial and would have been misleading to have admitted evidence tending to show that there was no device which would cause combustion *without emitting any smoke whatever.* The act of Congress does not prohibit the emision of any smoke whatever, but it is the emission of dense or thick black and gray smoke which is prohibited.

The other proposition, viz., "that it is physically impossible to comply with the terms of the act of Congress," seems to have been definitely settled in Moses vs. United States, where the court said: "That there may be no smoke-consuming appliance that will, under all circumstances, prevent the nuisance is not a matter of relevancy." (Moses vs. United States, 16 App. D. C., 440.)

Again, how it is physically impossible to comply with the terms of the act of Congress is not described in the offer either in reference to the furnaces in the building occupied by the defendant or in reference to any other furnaces. The offer, then, is that it is physically impossible to comply with the terms of the act of Conpress in the opinion of some person, and such person was the defendant, whose qualifications as an expert have already been considered, and "*other witnesses.*" Who the "other witnesses" were does not appear, neither was it shown that such witnesses had any experience or knowledge which would entitle their opinions to any consideration or make them of the least value. It is respectfully submitted that counsel for the prosecution (Record, page 3) properly objected to this

offer, for the reason that it was immaterial and irrelevant, and that the trial judge properly sustained the objection. It has been said more than once that the rules governing the introduction of expert testimony should not be relaxed, but should be strictly enforced with the greatest caution and discrimination, and the great weight of authority is that the trial judge has the discretion in deciding whether the witness is competent as an expert or not, and his discretion will not be reviewed on appeal unless the abuse of it is clearly apparent. It has been also held that if there is insufficient evidence or no evidence at all tending to prove that the witness is qualified to testify, and the trial court admits his evidence, then such action is abuse of discretion, which will be reviewed on appeal. If the Police Court had admitted this evidence, it would have been clearly in error, and as the questions involved seem to have been merely moot questions, we respectfully submit that the judgment of the Police Court should be affirmed.

II.

The first assignment of error is, that this statute is repugnant to the fifth amendment of the Constitution of the United States.

The argument of counsel for appellant is based upon that portion of the fifth amendment which declares: "Nor shall private property be taken for public use without just compensation."

The discussion of counsel proceeds upon the idea that the statute destroys private property "without making compensation to the owner;" that it creates "a burden so excessive as to work a confiscation of property," or requires "the expenditure of a large and unreasonable amount of money."

> "Nothing short of ceasing to carry on the business of renting offices would render it possible to comply with the statute. The defendant, it is true, is at liberty to go out of business, but when he so does his income is destroyed as a necessary consequence of compliance and his property practically confiscated," etc. (Appellant's brief, p. 10.)

This argument, of course, is made upon the mere assumption, which is without foundation, that there was evidence, either given or rejected, tending to show that there was a taking of the appellant's property or the creation of an excessive burden upon it, or the requirement of an unreasonable expenditure of money.

There was no evidence that appellant had ever made the slightest attempt to comply with the law by properly firing the furnaces by machinery or by hand, or that there were any sort of smoke-consuming devices connected with the furnaces, or that there had ever been expended or lost a single penny by reason of the enactment of this statute. It seems to us to be mere folly to say that any constitutional question has been raised in this case.

> "Nor will a court listen to an objection made to the constitutionality of an act by a party whose rights it does not affect, and who has therefore no interest in defeating it."
>
> (Cooley's Const. Lim., side p. 163.)

This statute is not to be robbed of the presumption of constitutionality in its favor, and like all other statutes, if a doubt exists as to its constitutionality, such doubt is to be resolved in favor of the law.

> "Neither will a court, as a general rule, pass upon a constitutional question and decide a statute to be invalid unless a decision upon that very

point becomes necessary to the determination of the case."

(Cooley's Const. Lim., side p. 163.)

The absence of facts demonstrating that there can be no substantial distinction between the classes of engines, etc., named and those excepted from the operations of the act is commented upon in the case of Moses vs. U. S. (16 App. D. C., 439), and so is the offer of evidence that no known smoke-consuming appliance would prevent the emission of such smoke for a brief period ruled on in the same case at page 440, and upon the *face* of the act and the facts in the Moses case as well this court has held this law to be constitutional.

That the statute in question is a valid exercise of police power was expressly decided in the Moses case (16 App. D. C., 434-435), and we therefore refrain from citation of authority upon this point. The exercise, too, of the right of eminent domain and of taxation are each an apparent exception to the taking of property without due process, yet whenever the "just compensation" is not given in the one case or the "notice" of the taxation in the other some claim of the want of these requisites must be made in some affirmative way, as by injunction or certiorari or other remedy.

Counsel for the appellant (pages 14 to 31, inclusive, of the brief) "contends that the act of Congress is designed to prevent the emission of smoke only so far as the adoption of smoke-consuming or other devices can secure such prevention." We must decline to follow counsel in his learned discussion of this proposition, for the reason that there was no evidence offered or submitted tending to show that the appellant had adopted any smoke-consuming or other device and no evidence legally offered from which it can be either assumed or

argued that there are no devices which can prevent the emission of smoke in manner prohibited by law. The authorities, however, have not given this act of Congress an unreasonable construction, for they have not required a total prohibition of smoke, whether dense black or gray or not, and have only enforced the law in cases where it was plain that unreasonable quantities of such smoke have been emitted.

We again refer, however, to the Moses case, wherein a different construction of the law than that contended for by appellant was announced by this court.

III.

Of the second assignment of error, we observe that the appellant's counsel contends that the injustice of positive law, opposition to the spirit of the Constitution, violation of the fundamental principles of social compact or legitimate legislation will render an act of Congress void. In a recent text book it is stated, "in several early cases the courts went so far as to declare that statutes passed against the plain and obvious principles of common right and common reason were void so far as they are calculated to operate in contravention thereto. But the more recent authorities are opposed to this view."

23 Am. & Eng. Ency. Law, 224.

Every position assumed by counsel for appellant in this assignment of error is met and answered effectually in Cooley's Constitutional Limitations, wherein most of the cases cited by counsel on this point are considered. Judge Cooley declares that a court can not declare a statute unconstitutional and void solely on the ground of unjust and oppressive provisions or because

it is supposed to violate the natural, social or political rights of a citizen, unless it can be shown that such injustice is prohibited or such rights guaranteed or protected by the Constitution. The same writer says: "It is true there were some reported cases in which judges have been understood to intimate a doctrine different from what is here asserted, but it will generally be found on examination of those cases that what is said is rather by way of argument and illustration to show the unreasonableness of putting upon Constitutions such a construction as would permit legislation of the objectionable character then in question and to induce a more cautious and patient examination of the statute, with a view to discover in it, if possible, some more just and reasonable intent than as laying down a rule by which courts would be at liberty to limit, according to their own judgment and sense of justice and propriety the extent of legislative power in directions in which the Constitution had imposed no restraint." Judge Cooley further says: "If the courts are not at liberty to declare statutes void because of their apparent injustice or impolicy, neither can they do so because they appear to the minds of the judges to violate fundamental principles of republican government, unless it shall be found that those principles are placed beyond legislative encroachment by the Constitution."

This same writer says that courts are not at liberty to declare an act void, because in their opinion it is opposed to a *spirit* supposed to pervade the Constitution, but not expressed in words. And this quotation is used: "When the fundamental law has not limited, either in terms or by necessary implication, the general powers conferred upon the legislature, we can not declare a limitation under the notion of having discovered something in the *spirit* of the Constitution, which is not even mentioned in the instrument."

The same book is authority for the following statement: "The rule of law upon this subject appears to be that, except where the Constitution has imposed limits upon the legislative power, it must be considered as practically absolute whether it operate according to natural justice or not in any particular case. The courts are not the guardians of the rights of the people of the State, except as those rights are secured by some constitutional provision which comes within the judicial cognizance. The protection against unwise or oppressive legislation, within constitutional bounds, is by an appeal to the justice and patriotism of the representatives of the people. If this fail, the people in their sovereign capacity can correct the evil, but courts can not assume their rights.

> Cooley's Constitutional Limitations, 5th Ed., side pp. 164, 165, 167, 168, 169, and 171.

It has been declared by the courts of this District that they have nothing to do with the *reasonableness* of an act of Congress.

In District vs. Waggaman the power to tax a vocation was involved, and the argument was that in order to be valid the exercise of the power must be *reasonable.* The court in disposing of this argument said: "But it was insisted that, in order to be valid, the exercise of this power must be "reasonable," and that the provisions requiring returns of commissions earned and imposing a tax thereon are not reasonable. This test of the validity of a municipal act or by-law can not be applied when the power to legislate on the subject has been expressly conferred. In that case we have only to construe the grant, and when the grant imports that the full power is given and that the measure and manner of its exercise are intrusted to the grantee we have

no more to do with the reasonableness of its exercise than with the reasonableness of an act of Congress."

(District vs. Waggaman, 4 Mackey, 335.)

It is respectfully submitted that there was no error committed by the Police Court, and that the judgment of said court should be affirmed.

A. B. DUVALL,
E. H. THOMAS,
Attorneys for Appellee.